IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.243 OF 2006

Dadu Rau Chougule & Anr. ...Appellants

Vs.

Bajrang Appa Kumbhar & Ors. ...Respondents

Mr.D.V.Sutar for the Appellants
Mr. G.S.Godbole for the Respondent Nos.1,2 and 4.

CORAM: A.S.OKA, J.
DATED: MARCH 24,2006.

P.C.:

1. Second Appeal is by the original Plaintiffs. The Trial Court decreed the suit for perpetual injunction filed by the Appellants and the District Court in an Appeal preferred by the Defendant Nos.2 to 4 has interfered.

2. The learned Counsel for the Appellants submitted that there are categorical findings recorded by both the Courts below that the Appellants-Plaintiffs are in possession of the suit land. He did not dispute that the sale deed on the basis of which the Appellants were claiming ownership has been declared to be invalid as per the provisions of the Bombay Tenancy and Agriculatural Lands Act, 1948. It is also not in dispute that an order has been passed under section 84-C of the said Act of 1948. He submitted that a revision application filed by the Appellant No.1 is pending before the

Maharashtra Revenue Tribunal and issue regarding illegality of the sale deed has not attained finality. He submitted that in any event the Respondents have no right,title or interest in respect of the suit property and therefore they have no right to dispossess the Appellants. Only the State Government can dispossess the Appellants.

3. I have considered the submissions. Perusal of the plaint filed by the Appellants shows that the suit for injunction is not based on the prior possession but the suit is based on title claimed on the basis of the registered sale deed dated 23rd June 1978. The case made out by the Appellants in the plaint is that they are the owners of the suit land and as such they are entitled to protect their possession.

4. As the position stands today, the order declaring the sale deed in favour of the Appellants invalid has become final. Thus, the Appellants cannot claim any title in respect of the suit land which is claimed in the suit. The learned Counsel for the Appellants has handed over a copy of the revision application filed by the Appellants before the Maharashtra Revenue Tribunal for my perusal. From the revision application it appears that the Appellant No.1 applied for regularisation of the said transaction and the said application was rejected. The revision application is filed for challenging the orders passed on application for

regularisation. It must be noted here that section 43 of the said Act of 1948 contemplates prior permission and there is no provision for regularisation of the transaction effected in contravention of Section 43.

5. Once the Appellants failed to establish the title on the basis of which the suit for perpetual injunction was filed, the Appellants are not entitled to perpetual injunction. Hence, there is no error in the view taken by the Appellate Court. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.